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No. 98-271

In The Supreme Court Of The United States

OCTOBER TERM, 1997

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON and CERTAIN LONDON MARKET INSURANCE COMPANIES,
Petitioners,

v.

INDIANA GAS COMPANY, INC., RICHMOND GAS CORPORATION d/b/a INDIANA GAS COMPANY, INC. and TERRE HAUTE GAS CORPORATION, d/b/a INDIANA GAS COMPANY, INC., *et. al.*
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR *AMICUS CURIAE* INSURANCE ENVIRONMENTAL LITIGATION ASSOCIATION IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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BRIEF FOR *AMICUS CURIAE* INSURANCE ENVIRONMENTAL LITIGATION ASSOCIATION IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

INTEREST OF *AMICUS CURIAE*

The lower court's ruling that, where Lloyd's Underwriters are parties, each member (or "Name") of a Lloyd's insurance syndicate must be considered in determining diversity jurisdiction threatens to restrict dramatically insurers' access to the federal courts. It will also undermine many pending insurance coverage cases.[1] This case is therefore of great practical importance to the members of the Insurance Environmental Litigation Association ("IELA"), which are most of the nation's major property-casualty insurers.[2]

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[1] Counsel for IELA authored this brief in its entirety. No person or entity, other than IELA, its members, or its counsel, made a monetary contribution to the submission of this brief. All parties have consented to IELA's participation as *amicus curiae*. Letters of consent have been filed with the Clerk's office.

[2] Since 1986, IELA has participated as *amicus curiae* in numerous cases addressing environmentally related insurance coverage. IELA submits this proposed brief on behalf of IELA members: Allstate Insurance Company; AIG Insurance Companies; Chubb & Son – a Division of Federal Insurance Company; CIGNA Property & Casualty Companies; Continental Insurance Company; Envision Claims Management Corporation; Fireman's Fund Insurance Companies; Hanover Insurance Company; The Hartford Insurance Group; Liberty Mutual Insurance Company; Royal & Sun Alliance; St. Paul Companies; Selective Insurance Company of America; State Farm Fire & Casualty Company; The Travelers Indemnity Company; United States Fidelity & Guaranty Company; Zurich-American Insurance Group. This brief is not submitted on behalf of IELA member St. Paul Companies or Zurich-American Insurance Group.

Insurers need to be able to seek relief in federal court both to avoid in-state bias and to expeditiously resolve complex cases. In environmental cases, which often involve Lloyd's syndicates, local passions can run deep about who should pay to clean up a site. The environmental harm may alarm in-state residents and drain the treasuries of local companies and governments. Out-of-state or foreign insurers, such as IELA's members, are often seen as a "deep pocket," without local influence, capable of picking up the tab for the cleanup. In IELA's experience, although most state courts strive in good faith to produce just results, some succumb to the temptation of relieving a local governmental entity or business from the burden of cleaning up pollution without regard to the terms of insurance contracts. For example, one trial judge held that "'the health, safety and welfare of the people of [this State] must outweigh the express provisions of the insurance policy in issue.'" *See, e.g., Summit Assocs., Inc. v. Liberty Mut. Fire Ins. Co.*, 550 A.2d 1235, 1239 (N.J. Super. Ct., App. Div. 1988) (reversing and quoting trial court).

A federal forum is also important because the federal courts are more suited to resolving large-scale coverage cases. These cases often involve numerous sites in multiple states and multiple states' laws. *See, e.g., Waste Management, Inc. v. Admiral Ins. Co.*, 649 A.2d 379 (N.J. 1994) (environmental coverage case involving Waste Management and 54 subsidiaries against 150 insurers concerning coverage for 97 sites in 22 states and Canada), *cert. denied*, 513 U.S. 1183 (1995); *Westinghouse Elec. Corp. v. Liberty Mut. Ins. Co.*, 559 A.2d 435 (N.J. Super. Ct., App. Div. 1989) (environmental coverage case involving 144 insurers covering 81 contamination sites in 23 states for the period of 1948-82). Federal courts are

uniquely suited to handle the nationwide scope and complexity of such cases.

IELA is also interested in this case because the lower court's ruling may lead to the dismissal of large-scale pending insurance coverage actions, many of which involve Lloyd's underwriters. Accordingly, IELA has a strong interest in the Court granting review in this case.

ARGUMENT

The Court should grant the petition for a writ of certiorari. The United States Court of Appeals for the Sixth Circuit and the Seventh Circuit are divided as to whether the citizenship of all of the Underwriters of a Lloyd's syndicate must be considered in determining diversity jurisdiction. This issue is important to the administration of justice in the federal courts. For the courts to follow the Seventh Circuit's rule that each Underwriter's citizenship must be considered would seriously undermine access by *all* insurers (and policyholders) to federal courts in complex insurance coverage cases. Also, such a rule threatens to cause a vast waste of judicial resources, given that Underwriters of Lloyd's are parties in many insurance coverage cases pending throughout the federal system.

I. THE SEVENTH CIRCUIT'S RULING IS ERRONEOUS AND DIRECTLY CONFLICTS WITH A PREVIOUS RULING OF THE SIXTH CIRCUIT.

The Seventh Circuit erroneously held that the citizenship of each of the numerous Underwriters (or "Names") who collectively form a Lloyd's syndicate must be considered in

determining diversity jurisdiction in a case involving such a syndicate. *See Indiana Gas Co. v. Home Ins. Co.*, 141 F.3d 314 (7th Cir. 1998). However, because only the syndicate's "Active Underwriters"—those Underwriters with control over the Names' assets—are the real parties to a controversy involving a Lloyd's syndicate, in a previous case the Sixth Circuit appropriately looked only to the Active Underwriters' citizenship, upholding diversity jurisdiction. *See Certain Interested Underwriters at Lloyd's London, England v. Layne*, 26 F.3d 39 (6th Cir. 1994). As the Seventh Circuit acknowledged, the cases are in direct conflict. *See Indiana Gas*, 114 F.3d at 319.

The Seventh Circuit held that the citizenship of each Name must be considered because it misapplied the rule in *Carden v. Arkoma Associates*, 494 U.S. 185 (1990), that the citizenship of each member of an unincorporated association must be considered when the association is a party. The court determined that the Lloyd's syndicates were parties to the case and analogized such syndicates to unincorporated associations. However, *Carden* does not apply because the syndicates were not parties; only the underwriters were named. In fact, a Lloyd's syndicate is not an unincorporated association and has no legal existence. *See, e.g., Roby v. Corp. of Lloyd's,* 796 F. Supp. 103, 111 (S.D.N.Y. 1992), *aff'd on other grounds,* 996 F.2d 1353 (2d Cir.) ("In sum: English law controls, and under English law the syndicates have no legal existence."), *cert. denied*, 510 U.S. 945 (1993). Rather, Lloyd's is "an exchange or a market where various individuals or groups bid on the right to insure a given risk." *Smith v. Lloyd's of London,* 568 F.2d 1115, 1117 n.3 (5th Cir. 1978). Because the case did not involve an unincorporated association as a party, the Seventh Circuit should have applied the rule in *Navarro Savings Ass'n v.*

Lee, 446 U.S. 458 (1980). That case holds that, when determining diversity jurisdiction in cases not involving associations or partnerships, only the citizenship of the "real party to the controversy" matters.

As the Sixth Circuit correctly determined, because the syndicates are not parties and the Active Underwriters are real parties to the controversy, only their citizenship must be considered. The Active Underwriters are real parties to the controversy because they have the sole power to "hold, manage and dispose of [the] assets" of the Names, and are personally liable on a policy. *See Navarro,* 446 U.S. at 464. The Active Underwriters of the syndicate have the sole authority to bind the Names of the syndicate and to carry on the affairs of the syndicate's members. *See generally* Pet. Cert., pp. 3-4 (describing Lloyd's and the London insurance market); s*ee also Boobyer v. Holman & Co.,* Queen's Bench Division (Commercial Court), 1 Lloyd's Rep. 96 (1992). By contrast, the Names who are members of a Lloyd's syndicate often number in the thousands. Like investors in a corporation, they merely contribute their wealth to a part of the risk underwritten by the syndicate. Accordingly, the Seventh Circuit erred in failing to apply *Navarro,* which mandates consideration only of the Active Underwriters' citizenship.

Indeed, before the decision below, many courts reached the merits of cases predicated on diversity jurisdiction and involving Lloyd's Underwriters as parties. For example, in *Wilton v. Seven Falls Co.,* 515 U.S. 277 (1995), this Court rendered a decision in a case involving Underwriters of numerous large Lloyd's syndicates. Many courts of appeals have also considered the merits of diversity cases involving Lloyd's Underwriters without questioning jurisdiction. *See* Pet. Cert., p. 17 n.14 (citing cases in each of the courts of

appeals). In *Smith,* the Fifth Circuit reached the merits of a case involving Lloyd's Underwriters after correctly describing Lloyd's as "an exchange or market." 568 F.2d at 1116 n.3. Undoubtedly, under the rule announced by the Seventh Circuit, many (if not the vast majority) of these cases should have been dismissed.

The conflict between the Sixth and Seventh Circuits is important to resolve. The Seventh Circuit's erroneous decision threatens to strip the federal courts of diversity jurisdiction where it is most appropriate, in complex cases that typically involve sites in multiple states, parties from various states, and multiple states' laws. It may also lead to the dismissal of pending cases across the country and, at the very least, will produce uncertainty in litigation involving the commitment of substantial judicial resources. Accordingly, the decision below merits this Court's review.

II. THE LOWER COURT'S DECISION THREATENS TO DENY A FEDERAL FORUM TO ALL INSURERS IN MANY INSURANCE COVERAGE CASES, WHERE FEDERAL JURISDICTION SERVES AN IMPORTANT PURPOSE.

If not reversed, the decision below will unjustifiably restrict many insurers from having access to the federal courts in large-scale insurance coverage cases. The decision affects the *entire* insurance industry, not just Lloyd's or the London Market insurers. If Lloyd's Underwriters cannot be joined in an insurance coverage case, a federal court almost certainly would not proceed with the case where all parties have been joined in a parallel state court proceeding, because the state court action will be more comprehensive. *See, e.g.,*

Wilton, 515 U.S. at 283 (quoting *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 495 (1942) for the proposition that a federal court's decision to proceed under the Declaratory Judgment Act involves consideration of "whether the claims of all parties in interest can satisfactorily be adjudicated in [a state court] proceeding"). Because policyholders routinely file competing state actions to take advantage of a local forum, *all* insurers will be deprived of the protections afforded by federal diversity jurisdiction in many important cases.

The concerns leading the Framers to authorize federal diversity jurisdiction in the Constitution were "that state attachments, state prejudices, state jealousies, and state interests, might some times obstruct, or control ... the regular administration of justice," *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347 (1816). "Diversity jurisdiction is founded on the assurance to non-resident litigants of courts free from susceptibility to potential local bias." *Guaranty Trust Co. of N.Y. v. York*, 326 U.S. 99, 111 (1945); *see also Erie R. Co. v. Tompkins*, 304 U.S. 64, 74 (1937) ("Diversity of citizenship jurisdiction was conferred in order to prevent apprehended discrimination in state courts against those not citizens of the state."). As IELA reviews below, these concerns are just as important today.

Studies repeatedly show that lawyers, and even federal judges, continue to perceive state court bias against out-of-state and alien interests, particularly those with "deep pockets." The experience of insurers in state courts confirms this impression. Although most state judges work in good faith to achieve just results, insurers continue to experience injustices apparently explainable only by a bias in favor of local interests. In addition, state courts are more crowded and generally less well-equipped. Accordingly, if left

standing, the Seventh Circuit's rule will affect important rights beyond those of the Lloyd's Underwriters.

A. Preserving Access to a Federal Forum is Important in Insurance Coverage Cases Because Out-of-State and Foreign Parties Perceive Some State Courts As Continuing to Manifest Bias Against Them.

The concerns that motivated the Founders to vest diversity jurisdiction in the federal courts, and that have motivated Congress consistently to retain it, still exist today. The lower court's decision will strip insurers of this important safeguard against local bias.

Since 1789, Congress has vested the federal courts with the responsibility of ensuring fairness in litigation between a local entity and an out-of-state party, whether foreign or domestic. *See Martin,* 14 U.S. (1 Wheat.) at 347; *Guaranty Trust,* 326 U.S. at 111; *Erie,* 304 U.S. at 74. Given the history of state bias against out-of-state interests, and selective enforcement of national laws, delegates to the Constitutional Convention of 1787 were highly conscious of the inadequacies and prejudices of state courts. As one delegate noted, "the Courts of the State can not be trusted with the administration of the National laws." J. Madison, *Notes on the Debates in the Federal Convention of 1787,* 319 (Norton 1987) (comments by Randolph). Exercising its mandates under Article III of the Constitution, when the First Congress convened in 1789, it immediately created the federal courts and vested them with jurisdiction in cases "where an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another

state." Judiciary Act of 1789, Ch. 20, § 11-12, 1 Stat. 73, 78, 79.

Despite repeated attacks on diversity jurisdiction, Congress has preserved and reaffirmed its central and original feature: that citizens of different states or countries be given the right to sue in federal court. *See Powell v. Offshore Navigation, Inc.*, 644 F.2d 1063, 1066 (5th Cir. (Unit A) ("Over the years Congress has repeatedly re-enacted or amended the statute conferring diversity jurisdiction ...."), *cert. denied*, 454 U.S. 972 (1981). The concern that corporations, such as insurers, are targets of in-state bias has been an important reason behind Congress's steadfast retention of diversity jurisdiction. *See City of Ketchikan v. Cape Fox Corp.*, 85 F.3d 1381, 1384 (9th Cir. 1996) ("The underlying purpose of diversity jurisdiction is to protect out-of-state corporations from local prejudice.") (citing S. Rep. No. 1830, 85th Cong., 2d Sess. 4 (1958)).

These concerns remain important. Authoritative studies have repeatedly documented the widespread perception that state courts are biased against out-of-state and foreign parties. One comprehensive 1992 study reported that fifty-four percent of *plaintiffs'* attorneys reported bias against defendants in state court. Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 Am. U. L. Rev. 369, 408-09 (Winter 1992). More than half of such plaintiffs' lawyers (51%) ascribed this bias to the defendant's out-of-state status. *Id.* Slightly less than half (45%) explained that the defendant's identity as a business or corporation gave rise to prejudice. A Minnesota study also found bias against the nature of the client to be the most important reason lawyers pursued their remedy in federal court. The third most important reason was prejudice against out-of-state interests.

Douglas D. McFarland, *Diversity Jurisdiction: Is Local Prejudice Feared?*, 7 Litigation 38, 40 (Fall 1980). Almost half (45%) of plaintiff's lawyers chose to litigate in state court based on their belief that the state court would be biased in their favor. Miller, 41 Am. U. L. Rev. at 408-09. Not surprisingly, perhaps, attorneys representing insurance companies were most likely of all defense attorneys to report out-of-state bias (59%). *Id.* at 413.

Historically, other studies have reported similar results. A Virginia survey found that more than 60% of attorneys said that local prejudice against out-of-state plaintiffs was a reason for choosing federal courts. Note, *The Choice Between State and Federal Court in Diversity Cases in Virginia,* 51 Va. L. Rev. 178, 179 (1965). Forty percent of Chicago lawyers believed that fear of local prejudice was at least somewhat important in choosing federal court. K. Marks, *Honors Paper at Northwestern University*, printed in *Hearings on H.R. 9622 before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 2d Sess. 265, 267 (1978).

Judges share this perception of prejudice. A 1992 survey conducted by the Federal Judicial Center found that many federal judges believe state courts still are biased against non-resident litigants. Forty-eight percent of circuit judges and 40% of district judges believed that state court bias was at least somewhat of a problem. Federal Judicial Center, *Planning for the Future: Results of a 1992 Federal Judicial Center Survey of United States Judges*, at 4, 26 (1994). Thus, it appears that the perception of state court bias that motivated the adoption of federal diversity jurisdiction remains.

In reality as well as perception, insurers have repeatedly been subjected to judicial determinations that appear explainable only by a state court's desire to find a deep pocket to reimburse local policyholders. This is especially true in cases addressing the availability of insurance coverage for large environmental cleanup projects. Such decisions have been strongly encouraged by local interests that may be harmed by pollution.

For example:

- The Wisconsin Assembly Committee on Natural Resources wrote the Wisconsin Supreme Court asking it to reconsider an insurance coverage decision on public policy grounds. A decision denying coverage, the Committee said, would "have a serious adverse effect upon state efforts to remediate contaminated sites." Letter from Wisconsin Assembly Committee on Natural Resources to Chief Justice Nathan S. Heffernan, Wisconsin Supreme Court (Aug. 4, 1994) (regarding *City of Edgerton v. General Casualty Co.*, 517 N.W.2d 463 (Wis. 1994), *cert. denied*, 514 U.S. 1017 (1995)).

- The Pennsylvania Attorney General urged the Pennsylvania Superior Court to affirm a trial court, in part "[b]ecause this is an age of limited public finances, [and] this funding must come from the private sector, . . . in this instance funds should flow both from manufacturers and from the insurance industry . . . ." Brief of *Amicus Curiae* Commonwealth of Pennsylvania, Department of Environmental Resources at 1-2, *Lower Paxton Township v. United States Fidelity and Guar. Co.*,

557 A.2d 393 (Pa. Super Ct. 1989) (No. 141 Harrisburg 1988).

- New Jersey's Department of Environmental Protection urged the New Jersey Supreme Court to decide an insurance coverage case in a manner "that will be consistent with the state's broad responsibility to remediate past contamination ...." Supplementary Brief of Respondent State of New Jersey, Department of Environmental Protection at 3, *State of New Jersey v. Signo Trading Int'l, Inc.* 570 A.2d 980 (N.J. 1989) (No. 30,960), *aff'd*, 612 A.2d 932 (1992).

These entreaties can place enormous pressure on state judges, who in 29 states are subject to popular election. *See* National Center for State Courts, *Examining the Work of State Courts, 1994*, at 16 (1996). Perhaps in part because of this pressure, state courts have at times succumbed to the temptation to have out-of-state and foreign insurers pick up the tab for cleaning up the environmental mess in their own backyard. *See, e.g., Summit Assocs.*, 550 A.2d at 1239 (reversing trial court holding that "the health, safety and welfare of the people of this State must outweigh the express provisions of the insurance policy at issue"). Yet, the orderly workings of insurance as an international economic mechanism allowing society to absorb massive risks depends on the reliability of insurance policy terms. In some recent state court cases, however, these considerations have taken a back seat to the desire to fund large local expenditures from an out-of-town source.

A few examples demonstrate that state court bias remains a valid concern today:

- In *Greenville County v. Insurance Reserve Fund*, 443 S.E.2d 552 (S.C. 1994), the South Carolina Supreme Court held that, because there is more than one meaning listed for the word "sudden" in the dictionary, the term is ambiguous and must be construed against the insurer. *Contra MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218 (1994).

- In *Morton International, Inc. v. Insurance Co. of North America*, 629 A.2d 831 (N.J. 1993), *cert. denied*, 512 U.S. 1245 (1994), the New Jersey Supreme Court barred insurers from ever enforcing an exclusion that had been part of many insurance agreements since 1970, when it had been approved by New Jersey's insurance regulators. The court based its "findings" that insurers had duped the regulators into allowing the exclusion on biased and partisan articles written by counsel for policyholders. These articles and other materials were submitted for the first time on appeal, and were never subjected to discovery, cross-examination, or any of the other rules of evidence.

- In *Duhon v. Nitrogen Pumping & Coiled Tubing Specialists, Inc.*, 611 So.2d 158 (La. Ct. App. 1992), despite a provision barring coverage for all actions that "result from the Assured's intentional and willful violation of any government statute, rule or regulation," the court found coverage of a suit in which the underlying claimants alleged that

> the policyholder was guilty of illegal and intentional pollution. *Id.* at 160 (Stoker, J., dissenting).

As these cases demonstrate, insurers have reason to persist in the belief that access to a federal forum is needed. As one commentator concluded, after surveying state court insurance rulings, many "supreme tribunals allow extralegal factors, which have little to do with the merits of the suits, to influence the disposition of insurance-related cases." *See* Willy E. Rice, *Judicial Bias, The Insurance Industry And Consumer Protection: An Empirical Analysis of State Supreme Courts' Bad Faith, Breach Of Contract, Breach-Of-Covenant-Of-Good-Faith And Excess-Judgment Decisions, 1900-1991*, 41 Cath. U. L. Rev. 325, 331 (Winter 1992). In addition, "state supreme court justices unintentionally allow the types of insureds to influence the disposition of . . . actions." *See id.* at 369.

Moreover, insurers face the same problem outside the environmental context. Most notably, some state courts have abused the interpretive principle that contracts are construed against the drafter to justify anti-insurer rulings that simply ignore the terms of the agreement. For example, in *Ponder v. Blue Cross*, 193 Cal. Rptr. 632 (Ct. App. 1983), a California appellate court held that a claimant could recover for costs relating to treating TMJ (temporomandibular joint syndrome) despite a provision in her policy stating that benefits would not be provided for "the treatment of temporomandibular joint syndrome or disease." *See also, e.g., Northwest Airlines, Inc. v. Globe Indem. Co.*, 225 N.W.2d 831, 837 (Minn. 1975) (holding that policy language should be construed against insurers because "the very fact that the [parties'] respective positions

as to what this policy says are so contrary compels one to conclude that the agreement is indeed ambiguous. The rule is well settled that ambiguous language should be strictly construed in favor of the insured.").

The availability of a federal forum is therefore important to protect the rights of insurers. Because the lower court's decision will broadly undermine the rights of insurers throughout the nation, it merits the Court's review.

B. Federal Courts are in a Better Position to Hear Complex Environmental Coverage Actions Than State Courts.

The lower court's rule will also prevent federal courts from serving their important function of facilitating the comprehensive resolution of complex insurance cases.

Complex environmental cases involving numerous parties and high stakes are appropriate to resolution by the federal courts. Environmental coverage cases frequently involve many parties, numerous geographically dispersed polluted sites, the law of multiple jurisdictions, and high stakes. *See, e.g., Waste Management,* 649 A.2d 379 (involving claim against 150 insurers for 97 sites in 22 states and Canada); *Westinghouse,* 559 A.2d 435 (144 insurers covering 81 contaminated sites in 23 states for the period 1948-82). Although state courts may be capable of handling such suits, these are precisely the types of cases over which the federal courts should exercise jurisdiction. Yet the rule adopted below would leave insurers without access to the federal courts in the most complex cases, which will often involve Lloyd's Underwriters. *See* text, pp. 6-7, *supra.*

Federal courts are widely perceived as more suited to handle complex disputes. In one Chicago survey, ninety-two percent of lawyers ranked the ability of federal judges as the primary reason to litigate in federal courts. K. Marks, *Honors Paper at Northwestern University*, printed in *Hearings on H.R. 9622 Before the Subcomm. on Improvements in the Judicial Machinery of the Senate Comm. on the Judiciary*, 95th Cong., 2d Sess. 265 (1978). In the same survey, the second reason, cited by ninety percent, was the federal courts' more current calendar. *Id.* Federal courts are generally faster than state courts. Although most states disposed of fewer cases than were filed with them from 1994 to 1996, National Center for State Courts, *Examining the Work of State Courts, 1996* at 23 (1997), federal courts cleared more cases than entered their system in each year during the same period. Administrative Office of U.S. Courts, *Judicial Business of the United States Courts,* Report of the Director at 18, 23 (1996).

Accordingly, it is important for the Court to grant review here, given the serious effect the case will have on the orderly prosecution of large-scale nationwide insurance litigation.

III. THE SEVENTH CIRCUIT'S RULE WILL LEAD TO A VAST WASTE OF JUDICIAL RESOURCES IF FOLLOWED.

If the lower court's rule were followed, the many diversity cases pending throughout the federal system that include Lloyd's underwriters as parties will be vulnerable to dismissal. This will lead to a substantial waste of judicial resources.

Nearly seventy district court opinions involving such cases were issued after 1995 alone.[3] Because such cases involve so many separate syndicates, each with many members who are typically scattered throughout the various states, it is likely that many of these cases are subject to dismissal under the rule announced by the lower court. Years of judicial resources may be wasted if such cases are dismissed. *See, e.g., K. Bell & Associates, Inc. v. Lloyd's Underwriters,* No. 92 Civ. 5249, 1998 WL 274346 (S.D.N.Y. May 26, 1998) (dismissing case after six years of litigation based on lack of diversity jurisdiction, following *Indiana Gas*). Indeed, this case illustrates the considerable waste that the Seventh Circuit's rule will produce. In three years of litigation, no party to the case—each with experienced appellate and coverage counsel—raised the jurisdictional issue. After considerable expense and consuming substantial judicial resources, the Seventh Circuit's ruling would force the parties to pursue the case anew in state court.

The likelihood of such a vast waste of judicial resources is a compelling reason to review this case. Granting the petition for certiorari is therefore justified by the importance of the issue to the sound administration of justice in the federal courts.

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[3] IELA reviewed cases via electronic database. The nearly seventy cases referred to here are ones in which London Market insurers or Lloyd's insurers appeared as parties in the case caption of an opinion published on-line. Many more cases may be pending where either an opinion has not been published or where Lloyd's or London Market insurers do not appear in the opinion's case caption.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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